IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 768 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINCHANDRA P PAREKH

Versus

JYOTSNA NAVINCHANDRA PAREKH

Appearance:

MR DM THAKKAR for Petitioner No. 1

MR YN OZA for Respondent No. 1

MS LATA B PARSNANI for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/09/2002

ORAL JUDGEMENT

Heard Mr. D.M. Thakkar, ld. advocate appearing for the applicant-revisionist. The present Civil Revision Application is filed against the order passed by the learned City Civil Judge in application below Exh. 20 for interim maintenance in HMP No. 106/97 inter alia

on the ground that the respondent has withdrawn from the society of the petitioner without any reasonable cause and therefore the petitioner is entitled for the decree of restitution of conjugal rights. It is to be noted here that after leaving the husband of the petitioner, the respondent had filed Civil Suit No. 5277/96 for maintenance and the same was withdrawn on an assurance given by the petitioner that the petitioner would keep the respondent in his house and will behave with her properly and there should not be any mental or physical torture as apprehended by the respondent.

2. Thereafter the respondent started to stay with the petitioner but again quarrels between them started and the respondent had to leave the house of the petitioner and she started leaving with her married daughter. In the HMP Suit No. 106/97 filed by the petitioner the respondent had appeared and moved an application at Exh.20 under Sec. 24 of the Hindu Marriage Act for interim maintenance. It was contended by the respondent that she has no wherewithal with her by which she can maintain independently and on the other hand the petitioner had retired from service and got Rs. 15 to 20 lakhs from the concerned department which is kept in the fixed deposit and from that he is earning Rs. 15,000/- to Rs. 20,000/- per month towards interest and therefore the respondent should be awarded Rs. 8,000/= per month towards interim maintenance.

3. The petitioner opposed the said application at Exh. 20 by filing objections inter alia contending that the respondent has sold the shop, xerox machine and other equipments which were purchased by the petitioner in her name and that she has taken away the sale price of Rs. 6,00,000/-. It was further submitted by the petitioner that the respondent is earning interest at least to the tune of Rs. 10,000/= and therefore the respondent is not entitled to claim any maintenance from the petitioner. It has been further submitted that the petitioner has retired from service of Ahmedabad Electricity Company and is not getting any pension or other income except the nominal amount of interest from the P.F. amount invested by him. The petitioner had therefore submitted that the respondent should not be awarded any maintenance pending the procedures.

4. The learned Judge however held that considering the bare necessities of human life and the present price rise the respondent should be awarded Rs. 1500/- towards interim alimony for herself. It is this order which is under challenge before this Court in the present Civil

Revision Application. This Court has admitted this Civil Revision Application and issued Rule on 30th August 1999. This Court has also stayed the operation of the order dated 4.3.1999 on condition that the petitioner pays interim maintenance at the rate of Rs. 500/= per month to the respondent from the date of the petition under Section 24 of the Hindu Marriage Act, that is 9.12.1998 subject to the condition that petitioner would deposit the said amount within one week from the date of the said order and if the said amount is deposited by the petitioner, the respondent shall be permitted to withdraw the said amount.

5. Mr. D.M. Thakkar, ld. advocate appearing for the petitioner submits that the respondent is having sufficient income of Rs. 10,000/- by way of interest on the investments made by her and therefore she is not entitled to get any maintenance. Mr.Thakkar has further submitted that the petitioner has no other income of pension etc., as there was no pension scheme in Ahmedabad Electricity Company from which the petitioner has retired from service. It is further submitted that the petitioner has no other income except some nominal interest being received from investment of PPF account. Mr. Thakkar has further submitted that the respondent on her own left the house of the petitioner which has constrained the petitioner to move the petition for restitution of conjugal rights. Since the respondent is not interested in discharging obligation arising out of marriage she is not entitled for any maintenance. Lastly, he has submitted that awarding of interim maintenance at Rs. 1500/= during the pendency of the proceedings is disproportionate to the income of the petitioner and hence the impugned order is required to be quashed and set aside.

6. Mr. Thakkar has further submitted that the impugned order is passed in HMP No. 106/1997. The said petition has already been dismissed by the learned City Civil Judge, Ahmedabad, by his order dated 5th January 2000. Once the main petition is already disposed of, the present Civil Revision Application which is arising out of an interim order passed in that petition does not survive. Even otherwise, in view of the amendment made in Sec. 115 of the Civil Procedure Code, the present Civil Revision Application, which is filed against the impugned order which is of an interim nature, is not maintainable. Even with regard to the merits of the matter, the learned Judge has awarded the interim maintenance of Rs. 1,500/- as against the respondent's claim of Rs. 8,000/- per month. What was weighed with

the learned Judge while awarding the interim maintenance of Rs. 1,500/- was the hard fact of life and he has rightly observed that considering the bare necessities of human life and the present price rise, the respondent should be awarded Rs. 1,500/- towards interim maintenance. This order cannot be said to be passed either without jurisdiction or in excess of jurisdiction. In any case, there was no jurisdictional error committed by the learned Judge nor any grave injustice is caused to the petitioner. This Court, therefore, does not think it proper to interfere in the order passed by the learned Judge while exercising its revisional jurisdiction under Section 115 of the Civil Procedure Code. The present Civil Revision Application is, therefore, rejected. Rule is discharged with no order as to costs. The petitioner is directed to pay the balance amount, that Rs. 1,000/= per month to the respondent from the date of filing of the petition under Section 24 of the Hindu Marriage Act within a period of four weeks from today.

rmr. [K.A. Puj, J.]